

SUMMARY
Virginia Housing Commission
Governor's Housing Conference
Hotel Roanoke and Conference Center
November 14, 2012
1:00 PM

Members Present: Delegate John Cosgrove, Delegate David Bulova, Delegate Barry Knight, and Delegate Daniel Marshall.

Staff Present: Elizabeth Palen

I. Welcome and Call to Order

- **Delegate John Cosgrove**, *Chair* called the meeting to order at 1:00PM.

II. Neighborhood Transitions Work Group

- **Mr. Mark Courtney:** *Deputy Director for Licensing and Regulations; Department of Professional and Occupational Regulations:* At the last session of the General Assembly, we discussed legislation on assessments. We have been working on this for the past year and will give a summary of our recommendations.
- **Real Estate Appraiser Board:** Earlier this year, the Governor signed legislation that requires the Real Estate Appraiser Board to evaluate the continuation of education curriculum for appraiser licensees. The Board reported its findings, and we are here to answer any questions you may have on the report. According to McGraw Hill Construction's 2012 report, new and remodeled green homes are transforming the residential market, and green buildings are one of the fastest growing segments in the housing industry, creating new opportunities for those in the housing industry. Energy efficient green homes provide tangible and economic benefits to all in the Commonwealth.
 - General appraisal textbooks and classes do not provide extensive guidance for the evaluation of green homes, but the availability of green courses and green certification is growing. The Board has concluded that existing continuing education resources and opportunities are adequate on a voluntary basis to meet the needs of its licensees and ultimately their clients in the appraisal of green homes. The Board recommends against the development of additional Virginia specific continuing education coursework because existing curricula appears to be sufficient.
- **Del. Cosgrove:** Already twenty CE hours are required every two year term, plus seven mandatory (USBAP) course hours.
 - Yes, that is the federal requirement.
- **Del. Cosgrove:** Twenty-one elective hours are also required.
 - That is correct and is required every seven years.

- **Del Cosgrove:** looking at the language of the bill, saying non-income producing residents. Do rentals not count?
 - Correct.
- **Chip Dicks:** *Realtors Association:* weighed on a builder perspective. His opinion was that if green features have been incorporated into the building, then it should be reflected in the assessment. The issues lies with Fanny Mae, Freddy Mac, that and the federal government, and the face they do not recognize the addition of green feature. What needs to be included in an assessment needs to be changed on a national level. The continuing education already includes some of those issues, but this will not be solved this year.
- **Del. Bulova:** If we are not pursuing it in the General Assembly, is the federal government pursuing this?
 - **Mr. Dicks:** I believe the DODD-Frank Act is addressing this and that it is on the federal agenda. To this point in time, the federal underwriting requirements have not been changed to include green features.
- **Del. Cosgrove:** could a developer take some LEED, and get continuing education credit.
 - **Mr. Courtney:** Yes.
- **Del. Cosgrove:** Inquired if there were any other issues that this workgroup tackled.
- **Ms. Elizabeth Palen:** Yes, Delegate Dudenhefer's issue (HB 731, Dudenhefer, Performance Guarantees, street construction, 2012) regarding dedicating the roads to the state, It was decided it was a Stafford County issue. After considerable discussion on the topic, it was decided that no action would be taken to propose legislation at this time.

III. Common Interest Communities Work Group

- **Del. John Cosgrove:** This issue was whether it be required or suggested that Common Interest Groups post their declarations or other information on internet sites. After much discussion, there was no consensus on legislation going forward.
 - Regarding (HB 979, Scott 2012) and (HB 213, Scott 2012), one deals enforcement of rules of home owners association act. Other removes cap that an owner's association may asses. Common Interest Communities work group voted for this legislation not go forward. Full Commission was in agreement.
 - Del. Cosgrove explained that a considerable amount of discussion took place on each proposed issue including speakers that represented each side of the issues.
- **Del. Cosgrove** explained that no senators are present at this meeting due to the Senate Finance Retreat, which is being held simultaneously to today's meeting.

IV. Housing and Environmental Standards Work Group

- **Mr. Edward Mullen:** *Reed Smith Law Firm:* He gave a synopsis of the three Attorney General's opinions and the effect on AOSS legislation being studied by the Commission.

- Since 2009, there have been more stringent local government requirements than state requirements. (Please see attached opinions). One opinion had to do with local exception to the zoning ordinance, and if it was prohibited by 15.2C of the Code of Virginia. The AG said that it requires special exception legislation and effectively gives that to the local governing body. The first opinion in of itself makes sense.
- The second question had to do with if maintenance bonds for AOSS's were permissible. And construction standards, could they exceed that of what the state required. 2157(D) of the code of Virginia clearly prohibits greater requirements for maintenance bonds as long as it doesn't exceed the state standard. He noted that this is only when there are sewer and sewer systems in the locality.
- The third opinion has to do with can a locality have more stringent requirement than the Department of Health if that would mean that the AOSS would not be allowed.
- Reading the three opinions together, we conclude that locality may never adopt requirements that exceed those of the state.
- **Mr. Mark Flynn:** *Virginia Municipal League*, did not agree with Mr. Mullin's interpretation. Instead, he felt that the AG's opinions were in conflict with one another, and localities were not explicitly prohibited from the exceeding the Department of Health regulations.
- **Mr. Eldon James** (representing Del. Lingamfelter): Proposed legislation address system failure for two groups: low-income families and bad actors, that refuse to make repairs. Del. Lingamfelter has asked just to go forward with the first part of the proposed legislation. (Betterment Loans) can be used for AOSS or conventional sewers. The bill directs Board of Health to use the Indemnity Fund to provide for the Betterment Loans. People with older systems with lower income are not in a position to fix the failed AOSS. The stakeholder group came up with this recommendation. A section of the proposed legislation increases the fee from \$10 to \$25 because the amount going to the Indemnity Fund has not changed.
- **Del. Marshall:** Is this the original fee paid when you file for an AOSS?
 - **Mr. James:** Yes.
- **Mr. James:** Emerging technology is ahead of the law, so need to update legislation. Del. Lingamfelter, would like to put in a study resolution on the AOSS issue.
- **Del Marshall:** Del. Knight and I have heard this at the last meeting. We want to know how many systems are out there and where they are. This is not just an issue in Northern Virginia. This is a problem for the entire Commonwealth.
- **Mike Toalson, Home Builders Association:** pointed out that there are many places in the state where there are not conventional sewers and AOSS are needed. Home Builders Association would be interested in working with local government to work on local regulation to design systems and how they are regulated. The State Department of Heath requires their maintenance on an annual basis, which is a good thing.

- **Chip Dicks:** The Virginia Association of Realtors has no concerns about the betterment loan. We submitted a piece of legislation that made clear that localities did not have the authority to impose a cash bond or other financial obligation, with the exception of maintenance.
- **Del. Bulova:** Are you asking that we develop a study around what we've been studying, or do we pass legislation and have a study?
- **Chip Dicks:** requested to add language saying that the locality can charge a cash bond.
- **Ted McCormack, Virginia Association of Counties:** We should not forget that we also looked at Del. Hugo's bill. It is important that these maintenance regulations for AOSS stay in place.
- **Del. Bulova:** has concern about funding for the Betterment Fund, as the funds are already stretched.
- **Mr. James:** Del. Lingamfelter will put forth a budget amendment.
- **Del. Knight:** It can cost anywhere from \$200-1500 for an annual inspection. I thought a list would be provided of inspectors available in each location in order that there be viable competition in the market place.
- **Mark Flynn:** I passed out an amendment that is no longer necessary now that we are only dealing with the Betterment Loan.
- **Del. Cosgrove:** I think this is a good thing for the workgroup to study, but we will defer the decision to a later date. Let's have the Housing Commission study this next year.
- **Del. Marshall:** I recommend Sen. Watkins convene another Housing and Environmental Standards Workgroup meeting.
- A decision was made to have Sen. Watkins request another meeting.

V. Continuing Care Retirement Communities Sub-Work Group

- **Ms. Palen:** The subcommittee has met three times and will meet again on Nov. 30. Some resident of CCRC wanted to be placed on the boards of the CCRC. This has changed over the course of studying the issues. Sen. Barker met with the insurance Bureau of the SCC.
 - The most likely scenario, is the SCC will adjust what they ask or in their annual audits to include a separate report from each entity under the umbrella organization. That they will also put out a post-it list for each facility before sign your CCRC residence contract.
- **Del. Cosgrove:** suggested that, similar to time-shares, a sheet is given to consumers with a readable font and in a concise manner.

VI. Affordability, Real Estate Law, and Mortgages Work Group

- **Delegate Danny Marshall:** We met three times this year, and we don't yet have consensus on the issues.
- **Chip Dick:** The versions you are looking at is version number seven. We have discussed the issue in a number of meetings. We have consensus on all the issues except for one facet. Last year at this meeting, legislation passed but this piece on

unlawful detainer was held because we did not have a consensus. When you have a hotel/motel and people are staying for extended periods of time, at what point do they become tenants. Does that premise become a dwelling unit, and under that process you would have to go court and use the landlord eviction process. At what stage would those circumstances be under the Innkeeper Statutes, which would allow somebody to change the lock on the door?

- This is not an issue for those who have separate permanent addresses, nor for the facilities such as a Courtyard Marriott. Innkeeper law is not by statute. It is case law. The question is whether the traditional hotels would have to go through the eviction process for non-payment in court. We worked with the Hotel/Motel Hospitality Association to exempt them. The language before you looks at the two Landlord Tenant Acts in Virginia: Virginia Residential Landlord Tenant Act and the Virginia Landlord Tenant Act. The language is very similar in the two acts, and takes out the traditional hotels where guests have a legal domicile elsewhere.
- People who do not have another primary residence are often not model citizens who do not have credit. People renting to them are not doing credit check or background checks, and allow people to pay week to week by money order. We want to be sure that portion of the population continues to be housed.
- However, if there is an issue of non-payment, the owner has the right to evict the tenant after a five day timeframe. Permanent residents who stay for more than ninety days are covered by one of the Landlord Tenant Acts. Our perspective, you are either under the Landlord Tenant Act or not. I support both aspects of this legislation. Ms. Marra's position is that you should be under the Landlord Tenant Acts for all other violations, not just non-payment.
- **Christe Marra, Poverty Law Center:** I want to remind you of two additional pieces of information (1) issue of people living in hotel/motels who are current on their rent and who the owner wants to evict for another through self-help eviction. If these were there for fewer than ninety days, that they should be covered by the tenant laws.
 - (2) Traditionally, people living in hotel/motels have been treated as tenants after thirty days, and changing the period to ninety days is a significant change. With the language regarding the five day notice, it should be applicable to everyone and not just those being evicted for nonpayment
- **Chip Dicks:** I disagree with the statement on the previous law. If you lived in a hotel/motel and not a dwelling unit, and thus not covered under the Landlord Tenant Act regardless of length of stay. We thought we had consensus three weeks ago. We will continue to work on this issue.
- A full discussion of the issue ensued.
- **Del. Marshall:** asked if another meeting was needed or would they be ready by the December 5 meeting.
- **Chip Dicks:** That's not necessary. We will work this out with all concerned parties.
- **Del. Marshall:** Our work group also dealt with the issue of false advertising, the Liability of Real Estate Brokers and Sales Person Exemption. (HB 724, Yansey 2012). Chip Dicks and Steve Pearson with the Trial Lawyers Association worked

on this bill and gave presentation to the work group. I don't think we're going forward on this issue, but Mr. Dicks will give an overview.

- **Chip Dicks:** It deals with the circumstance of a real estate agency that may be acting in capacity with respect to an apartment or condominium community. Chip described a particular case in Newport News where the plaintiff defamed the defendant by alleging criminal fraud without there being a criminal charge. I requested the bill be withdrawn, so we could take it to the Courts Committee.
- **Del. Marshall:** suggested we move on to (HB 566, D. Marshall 2012) regarding rental inspection districts.
- **Chip Dicks:** The rental inspection ordinance will be adopted on December 27. The issues that lead to the lawsuit and disagreement and the legislation have all been resolved in an amicable fashion through City Council. I've seen the (draft staff report) for that ordinance amendment, and it is to be presented on December 27 for final adoption. We think that disagreement between the realtors and city of Fairfax was closed. We greatly appreciate Del. Bulova's involvement, and would also like to thank the city council and city staff for working with us.
- **Del. Cosgrove:** Del. Marshall, any action?
- **Del. Marshall:** No action
- **Maureen Stinger,** *Office of General Council; State Corporation Commission*

VII. Time-Share Sub-Work Group

- **Del. Cosgrove:** I worked along with Del. Knight on the Time-share sub-work group dealing with changes to the Time-Share Act. The first changes were made last year that had been made since 1984. Last year, we added protections to time-share owners, requiring a particular form to be signed in large font that made clear that time-shares are not considered an investment so there is no guarantee of a sale. Other minor things were added to consumer protection.
 - This year, we were working on the developer side. We did two things: (1) developer control period. Under the existing act, the developer must turn over control to a Home Owner's Association when 90% of the units have been sold. The time-share industry has changed drastically since 1984. In many cases some of the owner managed associations don't have the same drive to maintain time-shares as a developer or management company would.
 - An owner's association can hire a management company, but often they do not and it turns into a glorified civic league and gets many maintenance fees and people are not happy later on.
 - Developers now are carrying a lot of the debt of those time-shares. In many cases, the developers are carrying the paper on that time-share. We looked at the liability the developer would have if he had to turn over management to a Home Owners Association where he still owned on paper a great deal of the time-share.
 - Last year's legislation, said that the developer can keep control of the management of said properties if he held 10% or more of the paper. We have

changed that now to 20%. That would allow the developer to maintain management until that time where 90% is sold, or they have less than 20% of paper. This is a very small change. Or has completely all the promised common elements. We had a number of people from both sides of the issue discuss the topic with us, with the exception of one individual, the working subgroup unanimously recommended that this proposed legislation be endorsed by the Housing Commission. I will ask that we wait to do this until December 5 at our next meeting.

- **Del. Bulova:** What was the concern of the one person who didn't like the idea
 - **Del. Cosgrove:** He thought the developers had too much of an advantage as it is now, and he also wanted to be sure that all the common elements promised were there.
- **Del. Cosgrove:** On the other bill, last year as part of the protections for the home owner's association. They had to advertise in the newspapers all the foreclosures, including all the variety of information on every unit. We changed the \$45 fee to the Commissioner of Accounts last year, which is costing the Time-share Association up to \$125 for each foreclosure. These are done on a batch basis, and costs the Time-Share Owner' up to \$50,000 more than it costs to advertise foreclosures.
 - **Del. Cosgrove:** These time-share foreclosures do not have to go through Commission of Accounts. The Time-Share Owners Association; I will bring this to the Full Commission on December 5.

VIII. Mortgage Loan Originator Act (SAFE Act)

- **Maureen Stinger, Office of General Council; State Corporation Commission:** I come to with piece of legislation pertaining to the Federal SAFE Act. This is small and technical. In 2008, following the subprime mortgage crisis, the most states had already regulated mortgage lenders and broker, which were generally the lenders with funding for loans, brokers who could be a company or an individual who were providing loans.
 - Because so many mortgages were subprime, the federal government stepped in and asked the states to start regulating individual people who provide their mortgages to them to be sure they properly educated in order to be licensed to originate loans. They passed the Secure and Fair Enforcement Mortgages Act (SAFE act), which gives the state a time period to enact legislation to license these individuals at the state level.
 - Since then, the federal government has put forth regulations interpreting the SAFE Act, which occurred concurrently with the States' enacting legislation. Final regulations came out in 2011, and then were transferred Consumer Financial Protection Bureau (CFPB). Because of all of the new regulations, we came before the Housing Commission last year with some technical changes to bring our act into compliance. Since the CFPB regulations came out in late 2011, we had not had a chance to be sure out act was in compliance.
 - You have before you a piece of legislation that details the new changes. Interestingly, there items in the federal regulations that do not match the federal act, which has created some confusion. We feel it more prudent to follow the

agency. We have changed some definitions, and some definitions were eliminated, as some exemptions in the federal regulations were removing making the definitions unnecessary. Some additional definitions were shored up. All of this was done for the legislation be in compliance with the federal regulations.

- A discussion ensued regarding the fact that Virginia was the first state to adopt the SAFE Act.
- **Del. Marshall:** Has this been distributed the members of the former work group? If not, Elizabeth, can you sent this out to everyone to see if they have any questions or concerns?
 - **Elizabeth Palen:** Absolutely.
- **Del. Marshall:** I would suggest that we not take action on this until we have responses from the members of the former workgroup. Then, if necessary, we can hold another meeting to discuss this further. We should give this to Sen. Watkins as well, as he is carrying the bill through the Senate.

IX. Public Comment

- **Del Cosgrove:** Yesterday, the city of Chesapeake took a vote on proffers, which I believe will cause some discontent within the General Assembly. The vote was to allow localities to use proffers for school maintenance instead of school construction and for uses other than construction of new homes. They also reduced the amount of proffers they were asking for because proffers are voluntary in the Commonwealth. I wanted to make everyone aware of this issue.

X. Adjourn

- As there was no more public comment, the meeting was adjourned at 3:15 PM